

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6916

Petition of Citizens Communications Company,)
d/b/a Citizens Energy Services, for a certificate)
of public good authorizing relocation of the 46.0)
kV transmission line on the Missisquoi Bay)
Causeway)

Order entered: 3/31/2004

I. INTRODUCTION

This case involves a petition filed on August 18, 2003, by Citizens Communications Company, d/b/a Citizens Energy Services ("Citizens"), requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248(j) for the relocation of the 46.0 kV transmission line on the Missisquoi Bay Causeway in the Towns of Swanton and Alburg, Vermont, to accommodate construction of a new bridge by the State of Vermont Agency of Transportation ("AOT").

On August 18, 2003, Citizens filed the petition, prefiled testimony, and proposed findings with the Public Service Board ("Board"), the Vermont Department of Public Service ("DPS") and the Vermont Agency of Natural Resources ("ANR"), as specified in 30 V.S.A. § 248(a)(4)(C), pursuant to the requirements of 30 V.S.A. § 248(j)(2).

Notice of the filing in this docket was sent on January 12, 2004, to all parties specified in 30 V.S.A. § 248(a)(4)(C) and all other interested persons. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 must file their comments with the Board on or before February 12, 2004. Notice of the filing, with a request for comments on or before February 12, 2004, was also published in the *Burlington Free Press* and in the *St. Albans Messenger*, on January 15 and 22, 2004.

The ANR filed comments with the Board on February 12, 2004. In its filing, the ANR stated that it does not oppose the proposed project and does not request a hearing. The ANR also

stated that it does not believe that the petition submitted by VEC raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248(b)(5).

The DPS filed comments with the Board on February 12, 2004. The DPS does not seek a hearing on any issue, but does recommend the inclusion of one condition in the certificate of public good ("CPG") issued for the project. In its letter, the DPS letter raises concerns regarding provisions for reimbursement contained in the Utility Relocation Agreement between Citizens and AOT. According to the DPS, the agreement allows for the possibility that Citizens may not be reimbursed for project cost increases over the agreed-upon estimated amount, if the increases are not approved by AOT as part of a supplemental agreement. Therefore, the DPS recommends that a CPG, issued by the Board, be conditioned upon Citizens promptly notifying the DPS of any incurred or anticipated cost increases by providing a copy of the itemized estimate and justification to the DPS, no later than the information is supplied to the AOT.

The DPS filed a Determination letter under 30 V.S.A. § 202(f) on February 26, 2004. The letter stated that the proposed project is consistent with the Vermont Twenty-Year Electric Plan for the State.

Vermont Electric Cooperative, Inc. ("VEC") filed a motion to intervene in this proceeding pursuant to Board Rule 2.209(A), on October 2, 2003. In support of its motion, VEC claims an interest relating to the transaction involved in this proceeding, because it has entered into a purchase and sale agreement with Citizens to purchase its Vermont distribution assets. VEC also argues that it has no other means of protecting its interest and those interests are not represented by another party involved in the proceeding. No party has opposed the intervention request. Therefore, the motion for intervention by VEC is granted.

The Board has reviewed the petition and accompanying documents and agrees that, pursuant to 30 V.S.A. § 248(j), a CPG should be issued without the notice and hearings otherwise required by 30 V.S.A. § 248.

II. FINDINGS

Based upon the petition and accompanying documents, the Board hereby makes the following findings in this matter.

1. Citizens is a company subject to the Board's jurisdiction pursuant to Section 201 of Title 30. Pet. at 1.

2. Citizens owns and operates a 46.0kV transmission line and 12.47kV distribution line on poles along the south side of the Missisquoi Bay Causeway on Rte. 78, in the towns of Alburg and Swanton. The existing bridge on the causeway is being replaced by a new bridge constructed by AOT. The new bridge will be located on the south side of the causeway. Scherer pf. at 2-4.

3. To accommodate construction of the new bridge, Citizens must relocate its poles and lines. Citizens proposes to build a temporary 46.0kV transmission and 12.47kV distribution pole line on the north side of the causeway and remove the existing line on the south side of the causeway prior to the start of the AOT construction. Upon completion of the new bridge, Citizens will build a permanent underground system with two circuits rated at 46.0kV under the shoulder of the new highway and within the bridge structure and remove the temporary line built on the north side of the causeway. *Id.* at 3.

4. The project will be constructed in three phases. Phase one consists of building the temporary pole line on the north side of the causeway, removal of the pole line on the south side of the causeway, and the permanent relocation of poles along the highway on the east and west side of the bridge. This phase of the project will take approximately four to five months. *Id.* at 6.

5. Phase two consists of installing the underground duct bank, the fiberglass conduits within the bridge, and cable which extends from the poles on the west side of the project through the bridge terminating on poles on the east side of the project. Removal of the temporary pole line on the north side of the causeway will take place upon completion of the underground work. This work can only occur after the bridge is completed and will take approximately three to four months. *Id.* at 6-7.

6. Phase three occurs on the east end of the project where poles will be relocated a second time due to the temporary nature of the roadway and cut over from the old roadway to the new roadway. This phase will take approximately two weeks. *Id.* at 7.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

7. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 8 through 10, below.

8. The project is mandated by the AOT plan to build the new bridge to replace the existing causeway on which Citizens' facilities are located. Scherer pf. at 3.

9. AOT is requiring the eventual removal and relocation of Citizens' existing pole lines. *Id.* at 6, 30.

10. Citizens has notified the District 6 Environmental Commission, the Town of Swanton, the Town of Alburg, and the Northwest Regional Planning Commission of the proposed project. No comments were received by Citizens in response to these notices. *Id.* at 29; Schuyler pf. at 16.

Need For Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

11. The proposed project is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy efficiency and load management measures. This finding is supported by findings 12 through 14, below.

12. Citizens must relocate the existing transmission and distribution facilities due to the elimination of the causeway and the construction of the new bridge. Scherer pf. at 3.

13. The project will continue to serve Grand Isle County over a projected forty-year period. *Id.* at 30.

14. The project incorporates the least cost option among various workable alternatives while maintaining the stability and integrity of the electrical distribution system presently afforded to consumers in Grand Isle County. *Id.* at 32.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

15. The proposed project will not adversely affect system stability and will ensure greater reliability. This finding is supported by findings 16-17, below.

16. The project will improve the reliability of electrical service to consumers in Grand Isle County, by eliminating the highly exposed overhead pole line on the causeway and replacing it with two circuits in an underground system. Scherer pf. at 32.

17. The project will maintain system stability through the use of the two underground circuits. *Id.* at 33.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

18. The project will result in an economic benefit to the state and its residents. This finding is supported by findings 19 through 24, below.

19. Citizens and the AOT have entered into a Utility Relocation Agreement ("Agreement") which describes the costs to be borne by each entity in connection with the proposed project. *See* Agreement, filed September 26, 2003.

20. The total construction cost for the project, according to the Agreement, is estimated at \$1,216,038. Agreement at para. b, pg. 2.

21. Citizens will incur \$257,288 in costs associated with the temporary aerial relocation of its lines located in the public right of way. *Id.* at Attachment 1(1): "Basis for Cost Sharing."

22. In accordance with the cost sharing arrangement included in the Agreement, Citizens will be reimbursed \$728,750 by the AOT for additional work done by the utility for undergrounding lines in connection with the project. Agreement at 2, para. c.

23. AOT will be responsible for performing the remaining \$230,000 of construction work associated with the project. *Id.* at 2, para. b.

24. The project benefits Citizen's members because it will ensure system reliability and stability. *Id.* at 32-33.

Aesthetics, Historic Sites, Air and
Water Purity, the Natural Environment and Public
Health and Safety

[30 V.S.A. § 248(b)(5)]

25. The project as proposed will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by findings 26 through 68, below, which are based on the criteria specified in 10 V.S.A. §§1424a(d) and 6086(a)(1) through (8), 8(A) and (9)(K).

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)]

26. The proposed project is not located on or near any Outstanding Resource Waters. Schuyler pf. at 22.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

27. The project as proposed will not result in undue water or air pollution. This finding is supported by findings 28 through 44, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

28. The proposed project will not be located in a headwaters area. Schuyler pf. at 6.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

29. The proposed project as designed will meet any applicable health and environmental conservation regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells. This finding is supported by finding 30 through 35, below.

30. The project will produce typical construction debris. The power poles and arms will be taken to Citizens' pole yard for reuse and the metal and porcelain components will also be

recycled. Any waste generated will be removed from the site and will be disposed of in an approved landfill. Schuyler pf. at 6.

31. The project does not involve any aquifer protection areas. *Id.* at 7.

32. The project will not result in any wastewater discharge. *Id.*

33. The project will not have an undue adverse impact on water quality. The bridge construction project received a 401 water quality certification from ANR which incorporates the relocation of the power lines. *Id.* at 7-8; exh. CCC-SAS-12.

34. The project does not require a site runoff permit as it is covered under the AOT's Discharge Permit for Storm Water Runoff From Construction Sites issued by ANR. *Id.* at 8; exh. CCC-SAS-13.

35. The project will not result in the generation of any hazardous waste. *Id.* at 9.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

36. The project will not require the use of water. Schuyler pf. at 10.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

37. The project will not impact the flow of flood waters. The bridge construction project received a lakes and ponds permit. *Id.*

Streams

[10 V.S.A. § 6086(a)(1)(E)]

38. No streams will be impacted by the proposed project. *Id.* at 11.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

39. The project will, in part, take place on the shoreline of Lake Champlain. *Id.*

40. The project will maintain the condition of the existing shoreline by using temporary poles and bracing placed on the causeway or above the high water mark. The permanent lines will cross the lake within the causeway and bridge structure. *Id.*

41. One of the purposes of the bridge relocation project is to restore full boating access between Missisquoi Bay and the rest of Lake Champlain. The existing bridge can no longer be opened for boat traffic, so traffic is restricted to boats that can pass under the bridge. The temporary lines that will be placed on the north side of the causeway will span the opening of the causeway at a height of thirty feet which is higher than what currently exists. The temporary lines will, therefore, not limit access more than the existing bridge. *Id.* at 11-12.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

42. AOT has received a permit from the United States Army Corps of Engineers and a Vermont Conditional Use Determination from the Vermont Wetlands Office for the bridge construction project. Any impacts related to Citizen's power line relocation are covered under these permits. *Id.* at 12-13.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

43. The project will not generate any undue noise, other than noise associated with road construction. *Id.* at 5.

44. The project will not be a source of airborne dust. *Id.* at 6.

Sufficiency of Water And Burden on

Existing Water Supply

[10 V.S.A. § 6086(a)(2)(3)]

45. The proposed project will not require the use of water and will, therefore, not place a burden on any existing water supply. *Id.* at 13.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

46. The project will not result in unreasonable soil erosion or reduce the ability of the land to hold water because the line relocation work will be conducted in the construction zone established for the AOT bridge construction project, therefore, no additional construction impacts will occur from the line relocation. *Id.* at 13-14.

Traffic

[10 V.S.A. § 6086(a)(5)]

47. The proposed project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. This finding is supported by findings 48 through 50, below.

48. Citizens' employees will travel to the job site in work vehicles. The project will require three line trucks, one or two pickup trucks and trucks to haul poles and reels of wire to the site. Schuyler pf. at 15.

49. At times traffic will need to be reduced to one lane on Rte. 78 when the temporary poles are installed and then removed on the north side of Rte. 78, and when the permanent poles are placed in the Rte. 78 right-of-way. Citizens will provide necessary traffic control at these times. *Id.*

50. No additional parking will be required for Citizens' workers, as they will use the AOT parking areas within the bridge construction area. *Id.*

Educational Services

[10 V.S.A. § 6086(a)(6)]

51. The proposed project will have no impact on the ability of the involved municipality to provide educational services. *Id.* at 16.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

52. The proposed project will not unreasonably burden the ability of any involved municipalities to provide municipal services. This finding is supported by findings 53 through 54, below.

53. Police, fire and rescue services and solid waste disposal may be required during the bridge construction project. Schuyler pf. at 16.

54. The line relocation will take place as part of the bridge construction and AOT has received assurances from the impacted localities that services will be available without creating an unreasonable burden. *Id.*

**Aesthetics, Historic Sites or Rare
And Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

55. The project as proposed will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 56 through 63, below.

56. Currently power lines and communication lines are located on poles that extend across Lake Champlain over the causeway. Schuyler pf. at 17.

57. The temporary relocation of the utility lines and poles on the causeway will not create an adverse impact as it will be comparable to the existing overhead lines. Boyle pf. at 3.

58. After construction, the utility lines will cross Lake Champlain in conduit installed within the causeway and bridge. Schuyler pf. at 17.

59. In order to accommodate the burial of lines, heavier construction will be required on the riser poles at either end of the causeway. However, this heavier construction will be mitigated by the relocation of the utility lines within the causeway and bridge structure. Boyle pf. at 3-4.

60. Overall, the project will be an improvement to the existing aesthetic conditions. *Id.* at 4.

61. A significant archeological site has been identified at the west end of the causeway in the Town of Alburg. Citizens will delay any work in this area until it is cleared for construction by AOT. Therefore, the project will not adversely impact known archeological or historic sites. Schuyler pf. at 18.

62. AOT has received a Threatened and Endangered Species Taking Permit from the Vermont Department of Fish and Wildlife and a Vermont Wetland Conditional Use Determination. Citizens will be bound by the construction restrictions in the 401 water quality certification issued for the bridge construction and its work will, therefore, not have an adverse impact on threatened or endangered species. *Id.* at 19.

63. Some of the guy wires from the new permanent utility poles will be installed in wetlands. However, the permanent wetland impacts from this project occur within the AOT bridge construction zone. The bridge construction has received an Army Corps of Engineers

Individual Permit and a Vermont Wetland Conditional Use Determination. Citizens's project plans qualify for coverage under the permits issued to AOT. *Id.* at 19-20.

Discussion

Based on the above findings, the Board finds that this project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. *Quechee Lakes Corporation*, #3W04 1 1-EB and 3W0439-EB, dated January 13, 1986.

As required by this decision, it is first appropriate to determine if the impact of the project will be adverse. The project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine that such an impact would be "undue." Such a finding would be required if the project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if it would offend the sensibilities of the average person, or if generally available mitigating steps will not be taken to improve the harmony of the project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these three standards will be significantly informed by the overall societal benefits of the project.¹

Given the facts of this case, this project will not have an adverse effect on the aesthetics of the area because the project will remove existing utility poles and overhead power and communication lines that span Lake Champlain and bury the lines in the causeway and new bridge. The removal of the poles and lines will have a positive effect on the aesthetics of the area. Further, all of the relocation and eventual burial of utility lines will occur within AOT's construction zone for the new bridge. Any additional environmental impacts of the utility work within the construction will be minimal.

1. Consider, for example, a reduction in the need for power plant or transmission investments, or other social costs.

Necessary Wildlife Habitat and
Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

64. The proposed project will not have an undue adverse impact any necessary wildlife habitat or known endangered species sites. This finding is based on finding 65 through 67, below.

65. The design of the bridge construction project has taken critical wildlife habitat into consideration. The additional impact of the power line relocation as part of the bridge construction project will be minimal. Completion of the project will enhance the public investment in the area by removing the overhead utility lines. Schuyler pf. at 20.

66. Citizens will follow the construction scheduling conditions in the AOT Threatened and Endangered Species Taking Permit intended to protect basking turtles on the causeway, thus minimizing any undue disturbance of the turtles caused by the pole and line relocation. *Id.* at 21.

67. Placing the power lines in the conduit within the bridge at the time of construction minimizes possible impacts on aquatic habitat during construction and long-term maintenance of the lines. *Id.*

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

68. The proposed project will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to such facilities, services, or lands. *Id.* at 22.

Consistency with Resource Selection
Least Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

69. The project is consistent with least cost planning principles and is consistent with Citizens' integrated resource plan. Scherer pf. at 33-34.

70. Citizens' 1997 integrated resource plan maintains the ability of the South Hero and South Alburg substations to back each other up in the event of a substation outage or loss of transmission at either source. The project is consistent with that provision of the plan. *Id.* at 34.

Compliance With Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

71. The project, as proposed, is consistent with the Vermont 20-Year Electric Plan. The DPS has determined, in a letter dated February 26, 2004, that the project is consistent with the Vermont 20-Year Electric Plan in accordance with 30 V.S.A. § 202(f). DPS Section 202(f) Determination, dated February 26, 2004.

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

72. The proposed project is not located on or near any "Outstanding Water Resource" as designated by the State of Vermont Water Resources Board. Schuyler pf. at 22.

Existing Transmission Facilities

[30 V.S.A. § 248(b)(10)]

73. The proposed project can be served economically by existing transmission facilities without undue adverse effect on Vermont utilities or customers. Scherer pf. at 35-36.

III. DISCUSSION

The DPS in its response to the instant petition from Citizens did not seek a hearing in any issues related to the project. However, the DPS has raised a legitimate concern relating to the reimbursement of Citizens for unforeseen increases in the size and scope of the project. According to the Utility Relocation Agreement between Citizens and AOT, Citizens would need to negotiate a supplemental agreement with AOT in order to receive reimbursement for costs beyond those described in their agreement. The DPS is concerned that ratepayers could be potentially responsible for increased project costs should a supplemental agreement fail to be reached by the parties. Therefore, the DPS recommends that a condition be added to the CPG requiring Citizens to provide the DPS with the itemized estimate and justification pursuant to the Utility Relocation Agreement at paragraph f at the same time this information is submitted to the AOT.

The Board agrees with the DPS that, to the extent this condition will be useful in alerting the DPS and the Board to any potential unforeseen cost consequences for consumers associated with the project, it should be included in the CPG. In addition, no party has raised an objection to the inclusion of the condition in the CPG. Therefore, the condition will be added to the CPG.

IV. CONCLUSION

Based upon all of the above evidence, the proposed construction will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the relocation of the 46.0 kV transmission line on the Missisquoi Bay Causeway in the Towns of Swanton and Alburg, Vermont, in accordance with the evidence and plans submitted in this proceeding, and as conditioned by the Board in the CPG, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248, and a certificate of public good to that effect shall be issued in this matter.

In the event Citizens seeks to enter into a supplemental agreement to recover increased costs associated with the utility relocation pursuant to its Agreement with AOT, Citizens shall file any information submitted to AOT associated with the supplemental agreement with the DPS and the Board no later than when that information is submitted to AOT.

Dated at Montpelier, Vermont, this 31st day of March, 2004.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: March 31, 2004

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.